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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

T937242.1US

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Application Number

Filed

10/623,546

07/22/2003

First Named Inventor

KONG, Germanus

on

Signature

Art Unit

Examiner

Typed or printed
name _____

3635

KATCHEVES, Basil S.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/98)

☒ attorney or agent of record.

Registration number 53,902

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34

Signature

Signature

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Telephone number

January 23, 2006

Date _____

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒ *Total of 4 forms are submitted.

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ocket: T937242.1

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	Examiner: KATCHEVES, Basil S.
KONG, Germanus)	Group Art Unit: 3635
Appln. No.: 10/623,546)	
Filed: June 22, 2003)	
For: INSECT BARRIER)	January 23, 2006

Mail Stop AF
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

In response to the Final Office Action dated July 21, 2005, the First Office Action dated November 4, 2005 and the Advisory Action dated October 13, 2005.

Applicant has duly filed a notice of appeal and appropriate fee accompanying this submission. Further, Applicant formally requests a pre-appeal brief review of rejections stated in the Advisory Action dated October 13, 2005, the Final Office Action dated July 21, 2005, and the First Office Action dated November 4, 2005. Applicant believes the stated rejections of record are clearly not proper and were provided without a prima facie case in support.

The stated rejections asked to form part of this pre-appeal review request are as follows: 1) rejection under 35 U.S.C. 102(b) in both the first and final Office Actions as the claims 1-6 and 9-19 are anticipated by U.S. Patent No. 4,164,105 to Herbst et al.; 2) statement in the final Office Action by the examiner that the terminology of "folded" of the claimed barrier and kit is a process limitation involved in the method of production; 3) statement in the final Office Action that use of terminology of "received by" versus "received in" provides for different claim constructions; and 4) Examiner's statement in the final Office Action that claim amendments submitted May 3, 2005, in response to the First Office Action dated November 4, 2005, necessitated new grounds of rejection – thereby

making final the second Office Action.

Arguments in Support of Pre-Appeal Brief Request For Review

Stated Rejection 1

Applicant believes that the rejection under 35 U.S.C. 102(b) is improper (refer to originally argued in responses filed May 3, 2005 and September 20, 2005), as the Examiner has failed to show that all claimed elements of current claims 1-19 is shown in Herbst et al.

In particular, upon review of the proposed "flanges" and "tabs" of Herbst, as suggested and marked by the Examiner, Applicant maintains that the adjacent positioning of the marked "flanges" and "tabs" of Herbst is in no way similar or even suggestive of the overlapped configuration of the claimed tabs and flanges in present claims 1 to 19. This difference in configuration is one differentiation of the claimed invention over the disclosure of Herbst, as the claimed flanges are configured to be received by the tabs rather than to be adjacently positioned as in Herbst. The proposed "flanges" of element 4 of Herbst are positioned adjacent to the proposed "tabs" of element 2, as the prong 21 is inserted in the channel 11, to form a butt joint between frame elements 1 and 2 as compared to the presently claimed overlapped joint.

Further, Applicant notes via the marked up Figure 1 of Herbst, provided by the Examiner, that element 1/2 and element 4 are considered as the first and second members respectively. Further, the Examiner has interpreted the channel/groove 12 of element 1/2 to be both a female connector (used for connecting elements 1/2 with element 4) and a channel for connecting the screen to the elements 1/2 and 4, which is improper. This dual component interpretation of the channel/groove 12 of Herbst is contrary to the presently claimed invention, which explicitly claims a first structural limitation of a female connector (provided by a pair of tabs) for facilitating connection of the members to one another and a second structural limitation of a continuous channel for connecting the screen to the assembled frame of the connected members, as described and claimed in the present application. Hence the female connector of the members and the continuous channel attached to the members are separate and distinctly stated claim structural elements. Accordingly, Applicant submits that the Figure 1 of Herbst does not disclose all of the structural limitations of the

presently claimed invention. Applicant maintains that the butt joint between the elements 1 and 2 of Herbst would be susceptible to insect infiltration, and as such in now way teach or even suggest the overlapped nature of the joints between respective members of the presently claimed invention. Accordingly, Applicant requests removal of stated rejection 1.

Stated Rejection 2 - "Folded" Limitation

Applicant believes that the objection to amended claims 1,2,5,9,14,16, presented in the response submitted May 3, 2005, as including a process limitation of "folded" is taken out of context and is without merit, and therefore resulted in a premature issuance of the Final Office Action.

Applicant has considered the Examiner's comments to the term folded being a process limitation. However, Applicant considers the proper construction of the term "folded" is as a descriptive term for a structural claim limitation denoting that the base material is integrally connected to the edge portion material (i.e. tabs) to define the female connector geometry, rather than the actual process of forming the tabs. Applicant considers the use of Applicant's own terminology appropriate in order to describe a novel structural feature of the claimed invention, in the case where the currently cited art of Herbst (and any other cited art for that matter) fails to describe the novel claimed structural feature. Accordingly, Applicant requests removal of stated rejection 2.

Stated Rejection 3 - "in" versus "by"

Applicant believes that the Examiner statements regarding a substantive construction difference between the term "in" and "by" in claims 1 and 14 is without merit.

Applicant notes the discussion of the Examiner on page 6 of the Final Action under Response to Arguments. Applicant considers the proper construction of the claim limitation "received by", with respect to the flanges of the male connector and the tabs of the female connector, is that the flanges are inserted into the tabs (i.e. the male connector is received by the female connector). Applicant notes that the claims should be taken in context with the rest of the specification, and as such the flanges are clearly positioned within tabs to make the frame connection between the first and second members. Further, Applicant has researched the term "received" on dictionary.com to have the meaning: To take in, hold, or contain: *a tank that receives rainwater*, taken from the source - The American Heritage® Dictionary of the English Language, Fourth Edition. Accordingly, Applicant

maintains there is no interpretive distinction between phrases "received by" and "received in" when interpreted in view of the whole specification. Accordingly, Applicant requests removal of stated rejection 3.

Stated Rejection 4

Applicant believes the statement in final Office Action that the Applicant's amendments submitted raised new ground(s) of rejection, is without merit.

Applicant believes that the amended claims 1,2,5,9,14,16, presented in the response submitted May 3, 2005, only contained additional language that was implicit in the application (claims and description) when viewed as a whole. Amended claim 1 is reproduced here for convenience as an illustrative example, emphasis added.

(Currently Amended) A barrier of variable dimensions configured for inhibiting an ingress and egress of insects with respect to an adjacent entrance, the barrier comprising:

a substantially planar closed frame including a plurality of interconnecting first and second members for defining an opening, at least some of the members configured for adjustment in length to conform the peripheral dimension of the assembled frame to those of the adjacent entrance;

((a)) the first member of the plurality of interconnecting members having a base having first and second edge portions, the first and second edge portions being folded toward each other to form ~~and~~ a pair of tabs ~~extending from the base~~ to provide a female connector;

((b)) the second member of the plurality of interconnecting members having a pair of flanges providing a male connector configured for being received by the female connector for coupling the first member and the second member to one another, such that when received the pair of flanges for overlapping overlap with the pair of tabs of an adjacent ~~said first member for coupling said first member and the second member to one another;~~

a plurality of ~~respective~~ channel portions attached to at least some of the members, the channel portions configured for providing a continuous channel disposed intermediate the first and second edge portions, the continuous channel extending around the closed frame once assembled; and the continuous channel ~~an insect screen~~ configured for attachment to an insect screen ~~the continuous channel~~ for covering the defined opening of the closed frame.

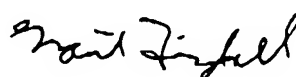
As shown above, the terminology of tabs as a female connector was originally included in the as filed claims and drawings, the cooperation of male/female connectors was included in the as filed

claims and drawings, and the continuous channel and its function were included in the as filed claims and drawings. Accordingly, the additional language submitted as amendments to claim 1 (and other claims were appropriate), denoted in underline above, were submitted to only further define the present invention as originally claimed.

In addition, as discussed above, Applicant believes that the objection to amended claims 1,2,5,9,14,16 (presented in the response submitted May 3, 2005) as including a process limitation of "folded" is taken out of context and the implication of a substantive construction difference between the term "in" and "by" in claims 1 and 14 are without merit. In view of the above discussion, Applicant requests removal of stated rejection 4.

The applicant respectfully requests that a favourable pre-appeal review and therefore a withdrawal of all stated rejections discussed above.

Respectfully submitted,



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